THE HONOURABLE SHRI JUSTICE K.C. BHANU

WRIT PETITION NO.1494 OF 2002

DATED THIS THE 12TH DAY OF AUGUST, 2005.

Between:

V.S.V.A.S Raju S/o Late Chinna Subba Raju,

Aged 26 years, Occ:- Attender, National

Senior Basic School, Rajahmundry,

East Godavari District. … Petitioner

And

The Commissioner,

Endowments, Hyderabad and another … Respondents

This writ petition is filed seeking a writ, order or direction in the nature of Mandamus declaring the action of the 2nd respondent in passing the Proceedings RC No.A2/6/2002-2 dt.8.1.2001 cancelling the appointment orders of the petitioner as illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 311 (2) of the Constitution of India and the Principles of Natural Justice and consequently declare that the petitioner is entitled to continue as Attender with all conseqwuentiasl benefits and pass such other order or orders as this Court deems fit and proper.

It is submitted that the petitioner passed 10th class and thereby got eligible and qualified to be appointed as Record Assistant. Through application dated 11.1.2001 the petitioner requested the 2nd respondent to post him as Record Assistant or Attender. Vide Proceedings D.Dis No.I.1/9296/2001 dated 2..3.2001 the 1st respondent sanctioned budget estimates for the Financial year 2001-2002 for the post of Attender along with other posts to the office of the 2nd respondent and in view of the same the 2nd respondent appointed the petitioner as Attender vide Letter R.C.No.Nil/2001 dated 1.4.2001 on a remuneration of Rs.1562/- per month. In pursuance of the appointment orders he reported to duty on 1.4.2001 forenoon and was admitted by the 2nd respondent. The 2nd respondent through his office Proceedings R.C.No.A2/68/2001 dated 19.9.2001 allotted the work. It is further submitted that the 2nd respondent through letter R.C.No.A2/44/2001 dated 5.12.2001 stated that his office requires the cadre strength of two Attenders. While so, to the surprise of the petitioner, through the impugned proceedings the 2nd respondent

cancelled his appointment orders on the directions of the 1st respondent without giving any notice, which is violaltive of the principles of natural justice and Articles 14, 16 and 311 (2) of the Constitution of India. Hence, he got filed this writ petition.

Against this a counter has been filed, wherein it is submitted that since the appointment of the petitioner was irregular and in violation of the ban orders, the same was concerned.

The learned counsel for the petitioner contended that without giving any notice, without conducting any enquiry and without recording any reasons the impugned orders have been passed and, therefore, it is liable to be set aside. He strongly placed reliance on Rule 4 of the A.P. Charitable & Hindu Religious Institutions & Endowments Rules, 1987 and contended that an employee of a Charitable Institution can be removed as per the procedure under Rule 19 of the A.P. Charitable & Hindu Religious Institutions & Endowments Rules, 1987.

On the other hand the learned counsel for the respondents contended that since the petitioner was appointed during the ban period and further there was no sanctioned post available, the 2nd respondent was right in terminating the services of the petitioner and, therefore, the said action does not call for any interference.

As seen from the impugned Proceedings dated 8.1.2002 the person-in-management-2nd respondent passed the said proceedings which reads as under:-

> "In pursuance of the directions given by the Commissioner, Endowments Department, Hyderabad, in the reference cited, the appointment order issued in R.C.No.Nil/2001 dated 1.4.2001 of Sri V.S.V.A.S. Raju, Attender, in Sri National Senior Basic School, Rajahmundry, is cancelled with immediate effect."

It may be a fact that the petitioner was appointed in violation of the ban orders. A perusal of the above proceedings makes it clear that no notice or opportunity was given to the writ petitioner before termination orders were issued by the 2nd respondent. The 2nd respondent issued the orders basing on the orders of the 1st respondent. In similar circumstances, in W.P.No.6166 of 2002 this Court made the following order:-

> "None of these contentions commend themselves to this court. No person holding a public office can be terminated ion merely following the due process of law if there are no valid or rational grounds for such termination. Implicit in this principle is the premise that public officials'services could be

terminated only if, in the context of the present case, his initial appointment itself is illegal or it is made by an incompetent authority or to a post which is not duly sanctioned or approved. But the fact that there is *prima facie* illegality or irregularity in the initial appointment of the petitioner, does not *ipso facto,* relieve the respondents of the obligation to comply with the principles of natural justice which are evolved as a matter of public law principle over centuries of dynamic jurisprudential process to safeguard persons in public office from arbitrary, whimsical or capricious exercise of power. No danger is caused to public interest necessitating terminating the services of the petitioner in unseemly haste and in violation of the principles of natural justice. There is nothing on record to suggest that any action has been initiated against the persons found responsible for the so called illegal appointment of the petitioner either. In the totality of circumstances above, I am of the considered view that the order of the 2nd respondent dated 20.02.2002 terminating the services of the petitioner forthwith, without affording him a notice or opportunity, is *void ab initio.* It beseeches invalidation and is accordingly set aside. In the light of the invalidation of the order impugned on the short ground of violation of principles of natural justice, it is not necessary to go into the substantive grounds for the termination of the services of the petitioner as urged by the respondents."

Following the said Judgment and in view of the fact that Rule 4 of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, has not been followed, the impugned proceedings are liable to be set aside and it is, accordingly, set aside. This, however, will not preclude the respondents in taking action in accordance with law. No costs.

Dt.12.08.2005. **K.C. BHANU, J**

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